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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**LAURENCE KAPLAN, on behalf
of himself, individually, and on
behalf of all others similarly
situated,**

Plaintiff,

vs.

**SAINT PETER'S HEALTHCARE
SYSTEM, RONALD C. RAK, an
individual, SUSAN
BALLESTERO, an individual,
GARRICK STOLDT, an
individual, and JOHN and JANE
DOES, each an individual, 1-20,**

Defendants.

)
)
) Civil Action No.
) 3:13-cv-02941-MAS-TJB
)

) Electronically Filed
)
)

**NOTICE OF CONSTITUTIONAL
QUESTION**

Pursuant to Fed. R. Civ. P. 5.1(a) and Local Rule 24.1, Laurence Kaplan, Plaintiff in the above captioned case, serves this Notice of Constitutional Question on the Attorney General of the United States. Plaintiff is challenging the constitutionality of the church plan exemption of section 3(33) of the Employee Retirement Income Security Act ("ERISA"), codified at 29 U.S.C.

§ 1002(33), as applied to the pension plan maintained by Defendant St. Peter's Healthcare System ("St. Peter's") and operated as, or claimed to be, a "Church Plan" under ERISA section 3(33) (the "Saint Peter's Plan"). Plaintiff has asserted this constitutional challenge in his Class Action Complaint filed in the above captioned case on May 7, 2013 ("Complaint" or "Compl."). The Complaint is attached hereto as Exhibit A.

The Church Plan exemption, as claimed by St. Peter's, is an unconstitutional accommodation under the Establishment Clause of the First Amendment. *See* Compl. ¶¶ 15, 165-67. The Establishment Clause of the First Amendment of the Constitution mandates governmental neutrality between religion and non-religion. U.S. Const. Amend. I. The ERISA Church Plan exemption is an accommodation that exempts churches and associations of churches, under certain circumstances, from compliance with ERISA. 29 U.S.C. § 1002(33). The ERISA Church Plan exemption, as claimed by St. Peter's, is an attempt to extend the accommodation beyond churches and associations of churches, to St. Peter's—a non-profit hospital conglomerate. *Id.* ¶ 166. That extension violates the Establishment Clause because it harms St. Peter's workers, puts St. Peter's competitors at an economic disadvantage, and relieves St. Peter's of no genuine religious burden created by ERISA. *Id.* As explained in the Complaint:

A. Workers are Harmed. Employers, including Saint Peter's, legally are not required to provide pensions; instead, they choose to provide pensions in order to reap tax rewards and attract and retain employees in a competitive labor market. Saint Peter's hires without regard to the religious faith of prospective employees; indeed, any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Saint Peter's employees. Thus, as a practical matter, and by Saint Peter's own design, its pension plan participants include people of a vast number of divergent faiths, as well as those who

belong to no faith. To be constitutional, an accommodation such as the Church Plan exemption must not impose burdens on nonadherents without due consideration of their interests. The Church Plan exemption, as invoked by Saint Peter's, places its longtime employees' justified reliance on their pension benefits at great risk, including because the Plan is underfunded by over \$70 million. In addition, Saint Peter's fails to provide the multitude of other ERISA protections designed to safeguard the pensions. The Church Plan exemption, as applied by Saint Peter's, provides no consideration of the harm to Saint Peter's more than 4,700 Plan participants, including all of those that are non-Catholic.

B. Rivals are Disadvantaged. Saint Peter's commercial rivals face substantial disadvantages in their competition with Saint Peter's because the rivals must use their current assets to fully fund their pension plan obligations and provide the other ERISA protections. To be constitutional, an accommodation such as the Church Plan exemption must take adequate account of any disadvantage it creates for nonbeneficiaries. The Church Plan exemption, as applied by Saint Peter's, provides no consideration of the disadvantage it creates for Saint Peter's competitors.

C. No Genuine Religious Burden is Relieved. Saint Peter's claims the Church Plan exemption to lighten its pension obligations and liabilities, not to adhere to a religious faith. To be constitutional, an accommodation such as the Church Plan exemption, which exempts compliance with ERISA, must relieve a genuine burden upon the recipient's *religious practice*. The Church Plan exemption, as claimed by Saint Peter's, responds to no genuine burden created by ERISA on any Saint Peter's religious practice.

Plaintiff seeks a declaration by the Court that the Church Plan exemption, as claimed by St. Peter's, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective. *Id.* ¶ 167.

DATED May 8, 2013

Respectfully submitted,

/s/ Daniel S. Sommers

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CERTIFICATE OF SERVICE

I, Daniel S. Sommers, hereby certify that on May 8, 2013, a true copy of the above document was served on the Attorney General of the United States and Defendant, St. Peter's Healthcare System, at the addresses below.

/s/ Daniel S. Sommers
Daniel S. Sommers

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